Levin & Chenkin
Counsellors at Law
70 South Orange Avenue
Livingston, New Jersey 07089-4908

August 9, 1991
VIA FAX (415) 322-1603

Mr. Paul Mahler
1800 Market Street #257
San Francisco, CA 94102

Re: Facstore Inc.
vs: Jonathan A. Chandross and Paul Mahler

Dear Paul:

I have been discussing with with Jonathan the possibility of a conflict with respect to our firm representing both of you in the above matter.

The complaint alleges that both you and Jonathan acted in concert to convert certain property belong to Facstore. Whether or not this allegation has merit, it still has to be defended.

It appears that you are holding certain materials and notes which may be deemed to belong to Facstore. Jonathan has no personal knowledge of this, and did not consent to it. In order to avoid a possible conflict, you would need to agree to take the position that you acted alone, and without Jonathan's knowledge or consent.

Please note that the fact that you are holding some material and notes does not constitute conversion. We will assert a possessory, common law lien on your behalf. We are simply being cautious in trying to avoid the appearance or a possibility of a conflict.

If you agree, please sign this letter where indicated, and return it to me together with the enclosed legal fee agreement.

Very truly yours,
LEVIN & CHENKIN

/S/ Maria A. Arena

By: Maria A. Arena
maa/m
cc: Jonathan A. Chandross

_____ _____

Paul Mahler Date

APPENDIX G

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION — UNION COUNTY
DOCKET NO. UNN-L-5221-94

Jonathan A. Chandross
Plaintiff (APPELLANT)

vs.

Maria Arena,
Joshua Levin,
Levin, Clancy, Foster & Arena
Defendants (RESPONDENTS)

TRANSCRIPT OF MOTION HEARING

July 28, 1995
Honorable Judge Leonard H. Sachar, J.S.C.

APPEARANCES:
JONATHAN A. CHANDROSS, Pro Se
Plaintiff

O'DONNELL, KENNEDY, VESPOLE, PIECHTA & TRIFIOLIS,
BY: MAUREEN LEPOCHAT, ESQ.,
Attorney for the Defendants

(Excerpts beginning at Page 31, Line 7, emphasis added):

Chandross ...Had it – **it been obvious to all parties that the Codefendant was the one who was actually responsible for any damages suffered by Facstore.**

The Court Well, the – your – **the Codefendant would never have conceded that. there was going to remain a factual issue of what happened, whether they were stolen,** whether things were taken out, whether there – I mean, **the issue of – of the Codefendants' culpability and who took what, and who did what, he wasn't going to agree that he did these things, and – it would have been a factual issue.**

Chandross Actually, your Honor, we – **we do have the Codefendant's signature on this letter of August 9th, 1991, saying that he agrees to take the position that, quote, "Jonathan has no personal knowledge of this and did not consent to it," so –**

The Court **I know, but his word was an issue against – whether he was involved in criminal activity was an issue. There**

Chandross We –

The Court There was – **there were serious allegations concerning him that couldn't have been matters of law, that were matters of fact.**

Chandross Your Honor, –

The Court **All I'm saying is, even if you agreed and he agreed, there – this had to go to a trial. There's no way factually that this didn't go – wasn't going to go to trial.**

...

APPENDIX H

SENATE, No. 1925

STATE OF NEW JERSEY

Introduced March 20, 1997

By Senators CARDINALE, MATHEUSSEN, Gormley, Martin, Scott, Kyrillos, Cafiero, Bennett and Zane

AN ACT concerning civil actions involving legal malpractice and supplementing Title 2A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. No claim against an attorney alleging legal malpractice shall be brought or asserted until all appeals arising from the cause of action underlying the malpractice claim have been fully exhausted or until there has otherwise been a final adjudication or other legally binding resolution or termination of that cause of action.

2. This act shall take effect thirty days following enactment and shall apply only to causes of action accruing after the effective date.

3. The entire controversy doctrine mandates that all claims between the parties to litigation be included within a single action. In *Circle Chevrolet v. Giordano, Halleran & Ciesla*, 142 N.J. 280 (1995) the New Jersey Supreme Court extended the entire controversy doctrine to legal malpractice claims. Thus, under the holding

in *Circle Chevrolet*, if a client knows or suspects that during the course of litigation his attorney has committed malpractice, the client must assert that claim in the action giving rise to the malpractice claim or risk being barred from asserting that claim after the underlying litigation is concluded.

Many legal commentators have suggested that it is unfair to force a client to make a decision about a possible malpractice claim while the underlying case is still pending. The *Circle Chevrolet* decision has also been criticized as unduly complicating litigation and as undermining attorney-client relationships.

In order to exempt the mandatory joinder of legal malpractice cases from the entire controversy doctrine, this bill provides that a legal malpractice claim could not be brought or asserted until all appeals in the cause of action underlying the malpractice claim have been fully exhausted or until there has otherwise been a final adjudication of that cause of action.

Exempts legal malpractice claims from entire controversy doctrine.

APPENDIX I

ABA/BNA Lawyer's Manual on Professional Conduct, V9 #3, March 10, 1993 (Excerpts, some boldface in original, some emphasis added):

PROTECTED INFORMATION — DISCLOSURE — CLIENT'S BENEFIT —

Lawyer should not reveal to judge, and judge may not require lawyer to disclose, client's instructions on negotiating settlement or lawyer's advice regarding settlement, unless client consents to such disclosure.

(ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 93-370, 2/5/93)

Digest of Opinion: **The committee has been asked whether the Model Rules of professional Conduct prohibit a lawyer from disclosing to a judge conducting pretrial settlement discussions the limits of settlement authority given by the client (i.e., the minimum the plaintiff will accept or the maximum the defendant will offer).** Further, the committee is asked whether a lawyer may properly be required to disclose to a judge in a settlement conference the lawyer's advice to the client regarding settlement.

Model Rule 1.6 prohibits the disclosure of information relating to the representation without the client's informed consent. **Both the limits of settlement authority and the lawyer's advice to the client regarding settlement are clearly "information relating to the representation" within the meaning of Rule 1.6. Therefore, disclosure of this confidential information is prohibited in the absence of consent by the client after consultation,** unless the disclosure falls within one of the exceptions specified by Rule 1.6(b) or (2) is "impliedly authorized to carry out the representation".

Neither of the Rule 1.6(b) exceptions applies. The requested disclosures also cannot ordinarily be considered as "impliedly authorized in order to carry out the representation." While a lawyer normally has implied authority to enter into routine stipulations and to admit matters not in dispute, the settlement parameters sought by the judge are neither routine nor uncontested. **The potential for adversely affecting the client's position, or leading to a disposition of the case that is not satisfactory to the client, will ordinarily be significantly increased by disclosure of the client's ultimate settlement position. Such information is confidential and its disclosure cannot be said to be impliedly authorized simply by reason of the lawyer's representation of the client.**

... It is not appropriate for the judge to compel lawyers to make confidential admissions which may be against their clients' interests. Thus the committee concludes **a judge may not require a lawyer to disclose settlement limits authorized by the lawyer's client, nor the lawyer's advice to the client regarding settlement terms.**

APPENDIX J

American Bar Association's Ethics Opinions, *Opinion 91-23 (5/23/91)*

Conflicts of interest; Multiple representation.

A lawyer may not represent two Co-Defendants in a civil matter when he has discovered evidence that tends to exculpate one of the clients and shifts the liability to the other Co-Defendant. The client's interests are now materially adverse so that representation of one client would limit the lawyer's ability to advance the interest of the other. Consent by the client would not cure this conflict. Rule 1.7

APPENDIX K

Excerpts from the dissent by the Honorable Justice Stein in *Prevratil, et al. v. Mohr*, 145 *N.J.* 180 (1996).

(at 202):

> **Regrettably, the majority has made no attempt to analyze the practical implications of its holding or to offer any pragmatic justification for a decision that inevitably will deprive innocent litigants of the right to file meritorious claims, implying that the entire controversy doctrine justifies itself. The Court pays lip service to the preclusive effect of its decision, without any attempt to explain what administrative goals it advances: "We will never sacrifice justice for economic considerations, but we cannot ignore the cost to the public of such extensive litigation." ... Those words ring hollow in the face of statistical and pragmatic evidence that the Court's ruling will have little or no impact on the management of litigation, other than to encourage the filing of motions to dismiss based on the entire controversy doctrine. A decision that deprives New Jersey citizens of access to our courts should stand on firmer ground.**

(at 211):

> **The framers of the Judicial Article of the 1947 Constitution would be appalled to learn that the "fusion of the powers of Law and Chancery in one Superior Court," designed to avoid the delay and**

duplication that results from "the splitting of a controversy," Ajamian , supra , 14 N.J. at 485, has been transformed into a bureaucratic procedural snare that closes the courthouse doors to innocent litigants with meritorious claims. The Court ignores at its peril the profound words of Justice Jacobs, one of the primary authors of the Judicial Article: "[A]fter all, justice is the polestar and our procedures must ever be moulded and applied with that in mind." New Jersey Highway Auth. v. Renner , 18 N.J. 485, 495 (1955).

(at 214):

But the fundamental harm done here is institutional. The judiciary exists to dispense justice, not deny it. We act in conflict with our most basic duty and function when we adopt rules or announce decisions that close the courthouse doors even to a single deserving litigant. The public that we serve is entitled to take for granted that when we act to bar meritorious claims we do so cautiously and reluctantly, and proceed only because the administrative goals that we advance are so essential and beneficial to the administration of justice as to warrant the adoption of a preclusionary rule. The Court falls far short of that standard here.